

The 24th October, 1995

No. 14/13/87-6Lab/759.—[In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Bhartia Cuttler Hammer Ltd., Faridabad *versus* Ved Pal Rawat.

IN THE COURT OF SH. U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD

Reference No. 60/88

between

THE MANAGEMENT OF M/S BHARTIA, CUTTLE HAMMER LTD., 20/4, MATHURA ROAD,
FARIDABAD

versus

THE WORKMAN NAMELY SH. VED PAL RAWAT, S/O SH. HIRA LAL, VILLAGE
PAYALA, POST OFFICE ASAWATI, BALLABGARH

Present :

Shri B. L. Gupta, Authorised Representative for the workman.

Shri S. S. Saini, Authorised Representative for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub section(i) of section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as 'the Act') the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government endorsement No. 17572—77, dated 27th April, 1988 :—

Whether the termination of services of Shri Ved Pal Rawat is legal & justified? If not, to what relief, is he entitled to?

2. The case of the workman is that he was employed by the management on 5th June, 1974 as an Assembler. He had been performing his duties to the entire satisfaction of the management. He commanded respect amongst his fellow workers and had been the President of Cuttler Hammer Mazdoor Union affiliated with INTUC. The management had formed a rival union of C.I.T.U. to demoralise his union. He was even physically assaulted on three occasions. He was also implicated in criminal cases. The management was still not satisfied. In order to get rid of him a charge sheet was issued to him containing false and flimsy grounds. He was placed under suspension. Then an order for holding of domestic enquiry was passed to complete the formality. The enquiry officer did not conduct the enquiry fairly and properly. He did not give reasonable opportunity to defend his case. He was not paid suspension allowance at 75% of his wages after 60 days as per provisions in the certified standing orders of the company. The Enquiry Officer based his findings on surmises and conjectures. Relying on the biased enquiry report, he was dismissed from service on 31st October, 1986. The penalty of dismissal from service is highly disproportionate, and harsh as compared to the alleged misconduct. Hence he is entitled to be reinstated into service with continuity of service and full back wages.

3. The management submitted written statement dated 6th September, 1988 stating therein that there were serious allegations against the workman. Consequently three chargesheets were issued to him. He submitted his reply to those chargesheets denying the allegations. It was thus, ordered that the domestic enquiry be conducted. The enquiry officer conducted the enquiry according to the principles of natural justice. The workman himself had been firstly delaying the enquiry proceedings and then deliberately did not appear before the enquiry officer. Consequently, the enquiry officer conducted the enquiry *ex parte* and submitted report that the charge against the workman were proved. Consequently, the workman was dismissed from service. The workman then raised demand notice. The management appeared before the Labour-cum-Conciliation Officer and explained the position. The Government of Haryana refused to refer the matter to the court and filed the demand notice.—*vide* order dated 10th June, 1986. The Government of Haryana referred the matter to this court,—*vide* its order dated 28th April, 1988 without informing the management as to which new acts and circumstances had come to the light warranting change in its earlier decision. The order of the Government is thus, bad in law being violative of the principles of natural justice.

4. The workman submitted rejoinder dated 31st October, 1988 re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issues were framed :

- (1) Whether fair and proper enquiry has been held into the matter?
- (2) Whether the reference is bad as alleged?
- (3) Whether the workman has been gainfully employed if so, to what effect.
- (4) As per reference.

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as follow :-

Issue No. 1 :

8. The management has examined MW-1 K. L. Chopre the enquiry officer and he narrated all the facts and circumstances with regard to the holding of enquiry and submission of his report. On the other hand, the workmen deposed the facts as mentioned in the claim statement.

9. Shri B. L. Gupta, authorised representative of the workman has assailed the enquiry proceedings on several grounds. To begin with he urged that the workman had failed to appear before the enquiry officer on 12th June, 1986 due to sudden illness. No workman to inform the enquiry officer as well as the management telegraphically about his illness but he could not do so as the telegraph office did not use to accept local telegrams, during that period. In that situation the workman had sent telegram to the management at its Head Office at Delhi. This telegram was duly received by the management and was also produced before the enquiry officer by the representative of the management. The enquiry officer had not recorded the statement of any of the witness by that date. The enquiry officer still passed an order that there was no need to issue fresh notice to the workman & on the plea that the workman had not submitted medical certificate and that he had been earlier delaying the enquiry proceedings due to one reason or the other. He conducted the enquiry *ex parte*. It is thus, clear that the enquiry officer illegally conducted the enquiry *ex parte* depriving the workman of his right to defend his case. Consequently, the enquiry stands vitiated.

10. In reply, it has been contended on behalf of the management that the perusal of the enquiry proceedings clearly shows that the workman had not appeared before the enquiry officer on 22nd January, 1986 despite the fact that he had received notice for appearance on 11th January, 1986. The enquiry officer did not proceed *ex parte* and adjourned the enquiry on 17th February, 1986. Again on 9th April, 1986 the enquiry officer had received the telegram mischievously given by the workman to the Head Office of the company at Delhi, although the notice sent to the workman through post was received back with the report of refusal. In spite of this, the enquiry officer had not proceeded *ex parte* and the enquiry was adjourned to 22nd April, 1986. Notice sent to the workman for appearing before him on 22nd April, 1986 was sent under registered post but it was again received back with the report of refusal but still the enquiry officer did not proceed *ex parte* and adjourned the proceedings to 13th May, 1986. The workman had appeared before the enquiry officer on 13th May, 1986 and had submitted application raising certain objections. In that situation the proceedings were adjourned to 13th May, 1986 for reply to the application of the workman. The workman admitted in his cross examination that he knew the local address of the enquiry officer about his illness on 12th June, 1986. The workman was required to intimate the enquiry officer deliberately with *malafide* intention sent the telegram at the Head Office of the management at Delhi. In this situation there was no intimation with the enquiry officer about illness of the workman and so he ordered for proceedings against the workman *ex parte* and adjourned the proceedings to 26th July, 1986 for *ex parte* evidence of the management. None appeared on behalf of the workman before the enquiry officer on 26th July, 1986 and in that situation the enquiry officer had rightly ignored the telegram of the workman received by the management. Thus, it can not be taken that the enquiry proceedings stands vitiated.

11. There is merit in the submission made on behalf of the management. It was the duty of the workman to inform the enquiry officer about his illness on 12th June, 1986. The enquiry was to be conducted in the office of the factory. The workman himself or his messenger must have gone to the telegraph office to give telegram at the Head Office of the management at Delhi. The workman himself or his messenger thus, could personally inform the enquiry officer about his illness. It is not disputed that the enquiry officer had no intimation on 12th June, 1986 about the illness of the workman and so he had rightly ordered for proceedings against the workman *ex parte*. The enquiry officer had not recorded the statement

of any of the witnesses on 12th June, 1986 and had adjourned the enquiry proceedings to 26th July, 1986. There was thus, a gap of 1½ months between 12th June, 1986 to 26th July, 1986. The workman was supposed to contact the enquiry officer at his residence or in the court being an advocate during this long period of 1½ months. The workman himself did not take any step except that as per his own version he had once visited the court to contact the enquiry officer but he was not available. Once the enquiry officer had ordered for proceedings against the workman *ex parte*, he could not set aside order that order in the absence of any request from the workman. In this situation, the decision taken by the enquiry officer to ignore the telegram produced by the management can not be dubbed as *malafide* or illegal. That being so, the contention raised on behalf of the workman has to be rejected.

12. It has been further urged on behalf of the workman that the workman had submitted an application before the enquiry officer on 13th May, 1986 demanding certain facilities such as lists of witnesses of the management, copies of complaints, and permission for being represented through representative. He had also requested for the charge of venue of the enquiry but no action was taken by the enquiry officer on this application. It is thus, clear that the workman was deprived his right to defend his case as per set norms. So the enquiry is illegal.

13. In reply it has been submitted on behalf of the management that the enquiry officer had given copy of the application dated 23rd May, 1986 to the management for its reply on 12th June, 1986. The workman had not appeared before the enquiry officer on 12th June, 1986 and as such no action was called for on the application of the workman. He is thus, estopped by his own act to raise the objection.

14. There is force in the submission made on behalf of the management because it is not disputed that the enquiry officer had adjourned the enquiry proceedings to the 12th June, 1986 for submission of reply by the management to the application dated 13th May, 1986 given by the workman. As discussed above the workman had not appeared before the enquiry officer on the 12th June, 1986. The workman had not appeared before the enquiry officer till the conclusion of the enquiry. In these circumstances, no action was called for on the part of the enquiry officer with regard to the application of the workman. That being so, the objection taken on behalf of the workman is untenable.

15. It has next been urged on behalf of the workman that the workman was entitled to get 75% of the wages after the expiry of 60 days from the date of his suspension. The workman was paid 50% of the wages during the entire period of his suspension. The enquiry proceedings thus, stands vitiated.

16. To counter this position, it has been submitted on behalf of the management that it is clear from the position mentioned above that the workman himself has been delaying the enquiry proceedings. He was thus, not entitled to 75% of the wages even after the expiry of 60 days from the date of his suspension as per provision in the Certified Standing Orders.

17. The plea of the management has to prevail keeping in view the position discussed above that the workman himself had been delaying the enquiry proceedings. Besides this, the workman had never made a request to the management to pay 75% of the wages. There is no allegation from the side of the workman that he could not have the services of any person due to his poor financial condition. Consequently, the enquiry proceedings can not be declared illegal on the ground that the workman was paid 50% of the wages during the suspension period.

18. Lastly it has been urged on behalf of the workman that the enquiry report is not based on the evidence adduced before him and as such it is invalid. To support this plea, it has been pointed out that the main charge against the workman was that on 10th June, 1985 he along with 20/25 workers had gone to the power house of the factory fully armed with lathis shouting derogatory and filthy slogans against the management and on reaching the power house he along with Surender Pal worker and other workers had cut off the power lines and as such switch off the electric power thereby bringing the production and working of the entire factory to grinding halt. The management examined Surender Pal before the enquiry officer. His statement clearly shows that it was falsely alleged that the present workman had switched off the power lines. The enquiry officer did not discuss this fact in his enquiry report at all. This position also is irrelevant the workman was innocent but the enquiry officer had wrongly held him guilty.

19. In reply, it has been submitted on behalf of the management that the other witness had categorically stated before the enquiry officer that the present workman had switched off the power house at the relevant time. Surender Pal was a Conscript with the present workman he said his statement could not over weigh the statement of the other witness. The thing which can not be taken that the findings of the enquiry are private.

20. The plea taken by the management is based on factual position. Surender Pal admitted before the enquiry officer that he was placed under suspension along with the present workman on account of switching off the power house. It is thus, clear that the Surender Pal had supported the workman at the relevant time. Om Parkash S/o Ram Sawroop who was also examined before the enquiry officer clearly stated that the present workman had switched off Generator in the power house. In this situation, it can not be taken that the findings on this count are perverse.

21. For the reasons recorded above, it is held that a proper and fair domestic enquiry had been held into the matter. Issue No. 1 is decided in favour of the management and against the workman.

Issue No. 2 :

22. MW-2 J. C. Ahuja deposed that the Government had rejected the request of the workmen to make reference through letter Ex. M-10. The workman had neither made any representation against this decision nor the Haryana Government had summoned them again. The Haryana Government had made the reference without giving them an opportunity of hearing.

23. On the other hand the workman deposed that his case was never rejected by the Government. He also placed a letter dated the 9th February, 1988 Ex. W-1/2 issued by the Labour-cum-Conciliation Officer directing both the parties to appear before him on the 19th February, 1988.

24. The plea taken by the management does not appear to be correct. The perusal of the letter dated 8th April, 1987 Ex. MW-1/2 shows that the Government had not finally declined the request of the workman to refer the matter to the court after considering it on merit. The Government had simply informed that no further action could be taken on the demand notice dated the 9th December, 1986 till the decision of pending ex-criminal case. The perusal of the judgement Ex. WW-1/1 shows that the criminal case was decided on 12th January, 1988. It is thus, clear that the Government initiated the proceedings after the decision of the criminal case and issued letter dated 9th February, 1988 Ex. WW-1/2 directing both the parties to appear before the Labour Commissioner. The management has not led any other evidence to show that the Government had rejected the request of the workman to make reference before 5th February, 1988. In these circumstances, it is found that the management had failed to prove that the Government had made the reference without giving any opportunity of hearing to the management after the rejection of the request of the workman in the first instance. Issue No. 2 is decided against the management and in favour of the workman.

Issue No. 3 :

25. The management has not led any evidence on this issue and as such it is decided against the management and in favour of the workman.

Issue No. 4 :

26. It has been submitted on behalf of the management that it is clear from the perusal of the impugned order dated 31st October, 1996 Ex. M-9 that it was passed after taking into consideration the charges contained in three charge-sheets served upon the workman, the explanation given by him and the enquiry report. Thus the impugned action on the management dismissing the workman from service is legal and valid.

27. Shri B. L. Gupta authorized representative of the workman has urged that it is clear from the impugned order Ex. M-9 that the workman was not given an opportunity to show cause as to why he should not be dismissed from service. The workman was thus deprived of his right to convince the management that the charges in the enquiry had not been proved. The order of the management is thus violative of the principles of natural justice and may be set aside.

28. There is no doubt that show cause notice was not given to the workmen for showing cause as to why the penalty of dismissal from service be not imposed upon him but the impugned order can not be declared illegal on this ground. This observation is based on the ground that there is no provision in the certified standing orders of the company under which the management was required to give show cause notice to the workman before passing the impugned order. Moreover it was decided by the apex court in the case of Union of India Versus Mohammad Remzan Khan 1991 (1) ILN 380 that after 42nd amendment in the Constitution of India the delinquent Government is entitled to supply of copy of enquiry report along with recommendation if any in the matter of proposed punishment after 20th November 1990 (i.e. the date of decision in the case by the Hon'ble Supreme Court).

29. It has also been urged on behalf of the workman that it is specifically mentioned in the order dated the 31st October, 1986 Ex. M-9 that the penalty of dismissal from service was being imposed

on the workmen keeping in view the serious charge of halting the company's total work by switching off electric power supply at Generator room as it was essential supply. Surender Pal Singh had admitted in his apology tendered before the management that he had switched off the Generator. This fact was not considered while passing the order dated 30th October 1986 Ex. M-9 imposing the penalty of dismissal from the service. The penalty imposed on the workman is thus quite harsh and disproportionate to the alleged charges against him. The admitted fact that the workman was the president of the union and had to fight out for the cause of the workman was also not considered. That being so the court should come to the rescue of the workman and order for his reinstatement and impose lesser penalty by invoking the provision of section 11-A of the Act.

30. There is no dispute that the workman was the president of the union and he had to fight out for the cause of the workman. The perusal of three chargesheets issued to the Rural workman however, shows that the workman had taken up the cause of a tea boy, employed by a contractor and not the cause of the workman employed by the management. Kamal was suspended by the contractor on 5th June, 1985. The present workman stopped distribution of tea at about 9 a. m. on 6th May, 1985 and demanded the meeting with the management on the issue of suspension of Kamal. The management told him that the question of termination of tea boy or its revocation was the function of the contractor but still the management had agreed to hold meeting at 4 p. m. The workman did not wait for the meeting at the fixed time. He instigated and incited the other workers of the company to the extent that they had assembled along with him in the administration block leaving their duties. The manager had to come out to explain that the meeting had already been fixed at 4 p. m. as he was busy at that moment. The workman had allowed him to go back but had incited the workers to stay on there and not to resume their duty till the meeting was held and as result thereof the workers had remained in the administration block till 4 p. m. The meeting was held and the management reiterated its stand that the question of Kamal's suspension could be decided by the tea contractor. The present workman did not accept the decision of the management and took a gate meeting at 5 p. m. on 7th June, 1985 challenging the management that if Kamal was not taken back on duty by Monday morning on 10th June, 1985 then he would not only personally bring him, but would also see that the entire factory was closed down. In these circumstances, the present workman had switched off the Generator set as mentioned above alongwith his supporters. The Generator set was got switched on by the intervention of the police. The charge against the workman in the second chargesheet dated 16th August, 1985 was that he had incited Makinder workman not to take copy of suspension order and had torned of the same. The charge against the workman in the third chargesheet dated 21st December, 1985 was that he had forcibly used telephone of the factory despite resistance from the watchman on duty. It is thus, clear that the workman was found guilty of the serious charges of mis-conduct of taking law in hands. He had no authority to do so even being the president of the union for the sake of a tea boy employed by a contractor. Keeping in view this position, it can not be taken that the penalty of dismissal from service imposed on the workman is disproportionate or harsh as compared to the charges against him. It is thus, not a fit case for invoking the provision of section 11-A of the Act to reduce the penalty. For the reasons recorded above, it is held that the impugned action of the management of dismissing the services of the workman is legal and valid. Issue No. 4 is decided in favour of the management and against the workman.

31. In view of the position discussed above, it is held that the dismissal of the workman from service is legal and justified. As a sequel to this finding the workman is not entitled to any relief. The award is passed accordingly.

U. B. KHANDUJA,

The 20th September, 1994.

Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 2969, dated the 4th October, 1994.

A copy with three spare copies is forwarded to the Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-I,
Faridabad